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10/028,382	12/21/2001	Michael A. Epstein	US010632	4889

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BRIARCLIFF MANOR, NY 10510

EXAMINER

PYZOCHA, MICHAEL J

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL A. EPSTEIN

Appeal 2008-3188
Application 10/028,382
Technology Center 2400

Decided: ¹ April 28, 2009

Before JOSEPH L. DIXON, ST. JOHN COURTENAY, III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date.

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-6. The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

A. INVENTION

The invention at issue on appeal relates to synchronizing source and destination systems via parallel hash value determinations. (Spec. 1.)

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1. A hashing system, comprising:
 - a plurality of hash devices,
 - each hash device of the plurality of hash devices being configured to receive a sequence of data values and apply a hash function to the received sequence of data values when enabled, said hash function being the same in said each hash device; and
 - at least one comparator, operably coupled to the plurality of has [sic] devices, that is configured to compare an output of each hash device to a source hash value, to facilitate a verification of the sequence of data values.

C. REFERENCES

The Examiner relies on the following references as evidence:

Davis	US 5,907,619	May 25, 1999
Akiyama	EP 1,041,767	Oct. 4, 2000

D. REJECTIONS

The Examiner makes the following rejections.

Claims 1-6 stand rejected under 35 U.S.C. 102(b) as being anticipated by Akiyama.

Claims 1-6 stand rejected under 35 U.S.C. 102(b) as being anticipated by Davis.

II. ISSUE

The issue is whether the Examiner has shown a prima facie case of anticipation based upon Akiyama or Davis.

III. PRINCIPLES OF LAW

35 U.S.C. § 102

"[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

"[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986), *overruled on other grounds by Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F.3d 1337 (Fed.Cir. 2004).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

VI. ANALYSIS

Appellant contends that neither Akiyama nor Davis discloses that the hash function is the same in each of the plural hash devices. (App. Br. 5 and 7).

From our review of the teachings of Akiyama relied upon by the Examiner, it is our reasoned opinion that the paragraphs identified by the Examiner [0029] and [0050] do not clearly establish that Akiyama teaches the use of the same hash function in each of the hash devices shown in figure 1. Akiyama in the abstract, and in paragraphs [0011], [0014], [0019], [0025] tend to evidence the use of different hash functions for the plural hash devices. Therefore, we cannot agree with the Examiner that Akiyama anticipates independent claims 1 and 4 and their respective dependent claims 2, 3, 5, and 6.

With respect to the teachings of Davis, from our review of the limited portion of Davis relied upon by the Examiner, we cannot agree with the Examiner that Davis clearly teaches the use of the same hash function in each of the hash devices as shown in figure 3. The portion of Davis relied upon by the Examiner merely teaches that each set of coefficients for the sections of the image frame are run through a hashing function 135₁-135₄. The results of the hashing function 135₁-135₄ are then combined into a hash

sequence table, which is digitally signed and transmitted. The reverse process is performed at the receiving side and a comparison performed.

From our review of the teachings of Davis, we find no express teaching that the hashing function is the same for each section of the image. Nor has the Examiner identified any express teaching in Davis that the hashing function is the same for each section of the image. Nor has the Examiner relied upon inherency in Davis. Furthermore, figure 3 uses different reference numerals for each of the hash devices, which suggests to us that they may be different so that they would not necessarily use the same hash and function.

In addressing Appellants arguments, the Examiner appears to use circular reasoning in an effort to show that Davis teaches the hash functions are the same in each of the hashing devices at page 7 of the Answer. However, anticipation requires that the reference disclose hashing functions that are either expressly or inherently the same. Whether the hashing functions may be the same or may not be the same would require speculation on our part. We decline to rely upon speculation to decide this appeal. Therefore, we find the Examiner has not met the initial burden to provide a teaching that the hashing function is the same in each of the hashing devices. Accordingly, we cannot sustain the rejection of independent claims 1 and 4 and their respective dependent claims 2, 3, 5, and 6 based upon Davis alone.

V. CONCLUSION

For the aforementioned reasons, the Examiner has not shown a prima facie case of anticipation based upon Akiyama or Davis where the same hashing function is used in each hashing device.

Appeal 2008-3188
Application 10/028,382

VI. ORDER

We reverse the anticipation rejection of claims 1-6.

REVERSED

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